IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 34154 of 2006(N)

OS.1996/2003 of MUNSIFF COURT,IRINJALAKUDA
CMA.8/2006 of ADDL.SUB COURT, IRINJALAKUDA

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PETITIONER:

GANESAN, AGED 46, S/O. KANNAMPARA
THAZHATHETHIL PARUKUTTY NANGARU,
POOPATHY DESOM, POYYA VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

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1. JOSE, S/O. PAZHAYATTIL CHAKUNNY,
KOTTAMURY DESOM, VADAMA VILLAGE,
MUKUNDAPURAM TALUK.

2. POULY, S/O. PAZHAYATTIL CHAKUNNY,
KOTTAMURY DESOM, VADAMA VILLAGE,
MUKUNDAPURAM TALUK.

BY //

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.34154 OF 2006

Dated 21st December 2006

JUDGMENT

Petitioner is plaintiff in O.S.1996/03 on the file of Munsiff court, Irinjalakuda. Defendants though appeared through a counsel, did not file a written statement and subsequently were set ex-parte and later an ex-parte decree was passed. After years I.A.1324/05 and 1325/05 were filed under Section 5 of Limitation Act to condone delay and under Order IX Rule 13 of Code of Civil Procedure to set aside ex-parte decree contending that the counsel to whom they entrusted the vakalath left India without their knowledge or information and they were unaware of the decree till they received notice in execution petition and immediately on enquiry it was found out that an ex-parte decree was passed and applications were filed to condone delay and to set aside the ex-parte decree. Learned Munsiff dismissed both applications. Respondents challenged that order in C.M.A.8/06 before Sub court, Irinjalakuda. Learned Sub Judge under

Ext.P3 order found that though there was delay and latches on the part of respondents, they had entrusted the case with a counsel who left India and did not inform respondents and in such circumstances for the fault of the counsel, parties shall not suffer and allowed C.M.A on payment of cost of Rs.2500/-. Order is challenged in this petition filed under Article 227 of Constitution of India. Petitioner contended that Sub Judge should not have interfered with the order passed by learned Munsiff especially when sufficient cause was not shown.

2. Learned counsel appearing for petitioner was heard.

3. On going through Ext.P3 order, I find that though negligence and latches could be attributed to respondents, learned Sub Judge rightly found that ex-parte decree happened to be passed because of the act of the counsel who left India without intimating the parties. In such circumstances, interest of justice warrants condonation of delay and setting aside the ex-parte decree. Learned Sub Judge allowed applications on payment of cost of Rs.2500/-. In such circumstances, exercising extra ordinary jurisdiction of this court under Article 227 of Constitution of

India, I do not find any reason to interfere with Ext.P3 order when net result of the order is only rendering justice to the parties. Learned counsel appearing for petitioner then submitted that learned Munsiff may be directed to dispose the suit within a time frame. Considering the fact that suit was filed in 2003, learned Munsiff is directed to dispose the suit as expeditiously as possible, and at any rate before closing of the courts for summer vacation.

Writ petition is disposed of.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.